Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Application of Verizon New Jersey, Inc.,	)	
BellAtlantic Communications, Inc. (d/b/a	)	
Verizon Long Distance), NYNEX Long	)	WC Docket No. 02-67
Distance Company (d/b/a/ Verizon Enterprise	)	
Solutions), Verizon Global Networks, Inc., and	)	
Verizon Select Services, Inc., for	)	
Authorization to Provide In-Region InterLata	)	
Services in New Jersey	)	

COMMENTS OF AT&T CORP.

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April 8, 2001

TABLE OF CONTENTS

FCC ORDERS CITED

SHORT CITE	**FULL CITE**
AR/MO 271 Order	Memorandum Opinion and Order, *Joint Application by SBC Communications Inc., et al. to Provide In-Region InterLATA Services in Arkansas and Missouri*, CC Docket No. 01-194, (rel. November 16, 2001)
Local Competition Order	First Report and Order, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd. 15499 (1996), *aff'd in part and vacated in part by Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *aff'd in part and rev'd in part by AT&T Corp. v. Iowa Utils. Bd.*, 119 S. Ct. 721 (1999)
Massachusetts 271 Order	Memorandum Opinion and Order, *Application of Verizon New England Inc. (d/b/a Verizon Long Distance) et al For Authorization to Provide In-Region InterLATA Services in Massachusetts*, 16 FCC Rcd. 8988 (2001)
Michigan 271Order	Memorandum Opinion and Order, *Application of Ameritech Michigan Pursuant to Section 271 to Provide In-Region, InterLATA Services in Michigan*, 12 FCC Rcd. 20543 (1997)
NY 271 Order	Memorandum Opinion and Order, *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York*, 15 FCC Rcd. 3953 (1999)
Pennsylvania 271 Order	Memorandum Opinion and Order, *Application of Verizon Pennsylvania Inc. et al. for Authorization to Provide In-Region, InterLATA Services in Pennsylvania*, CC Docket No. 01-138 (rel. Sept. 19, 2001)
Rhode Island 271 Order	Memorandum Opinion and Order, *Application of Verizon New England Inc., et. al., for Authorization to Provide In-Region InterLATA Services in Connecticut*, CC Dkt. No. 01-324 (rel. February 22, 2002)
Texas 271 Order	Memorandum Opinion and Order, *Application by SBC Communications Inc., et al Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, 15 FCC Rcd. 18354 (2000)

APPENDIX TO COMMENTS OF AT&T CORP. IN OPPOSITION TO VERIZON's SECTION 271 APPLICATION FOR NEW JERSEY

WC Docket No. 02-67

EX.	DECLARANT	SUBJECT(S) COVERED
A	Baranowski	Pricing
B	Walsh	Pricing
C	Kamal	Non-discriminatory Access to OSS
D	Regan	Public Interest / Anticompetitive Conduct By Verizon

Before the
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In the Matter of Application of Verizon New Jersey, Inc., BellAtlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a/ Verizon Enterprise Solutions), Verizon Global Networks, Inc., and Verizon Select Services, Inc., for Authorization to Provide In-Region InterLata Services in New Jersey	)	WC Docket No. 02-67

COMMENTS OF AT&T CORP.

Pursuant to the Commission's Public Notice, AT&T Corp. ("AT&T") respectfully submits these comments in opposition to the second application of Verizon for authorization to provide in-region, interLATA services in New Jersey.[1]

INTRODUCTION AND SUMMARY

Verizon filed its first New Jersey Section 271 Application at a time when residential local competitive entry in New Jersey consisted of one facilities-based entrant serving a handful of customers and a few UNE-based entrants serving fewer than a thousand residential customers. There has been no material change. Verizon still serves about 98 percent of all residential customers in New Jersey, and nearly all of the remaining two percent of customers are

[1] Verizon has styled its refiling as a "Supplemental Brief," and addresses in its brief only the "small subset" of issues it deems "unresolved." VZ Supp. Br. at 1. As to the remainder, Verizon "adopts *in toto*" all its filings in the prior New Jersey proceeding. *Id.* AT&T will likewise not repeat the analysis in its prior filings, and incorporates those filings by reference. With respect to some of the issues on which AT&T previously identified checklist violations, AT&T has nothing further to add here, and, like Verizon, AT&T stands on the existing record from the prior application. Each issue provides independent grounds for rejecting the newest application.

served by resellers (that are attracting few new customers). Verizon's own data show that UNE-based entrants serve far less than one percent of available residential lines in New Jersey. *See* Torre Supp. Decl., Att. 1. By any measure, this level of competitive entry is negligible, and is clearly not a sign of irreversibly open markets in New Jersey. The number of lines served by new entrants in New Jersey pales compared to that in Pennsylvania and New York at the time of those applications. *See* AT&T Comments at 38-39. Indeed, no 271 application has been granted on such a competitively weak foundation.

The massive record created by Verizon's first Application shows that the failure of local competition to emerge in New Jersey is directly traceable to Verizon's resistance to implement fully its checklist obligations. Through years of litigation challenging crucial aspects of its market-opening obligations, Verizon has effectively denied CLECs access to essential elements of its network. Until November 2001, Verizon's non-TELRIC UNE rates were so high as to preclude on their face any UNE-based residential entry in New Jersey. The record further established that, even after the long-overdue reductions in many recurring UNE rates, Verizon still imposed prohibitively high recurring and non-recurring charges that preclude UNE-based entry.

Most prominently, the hot cut nonrecurring rates ("NRCs") that Verizon relied upon in its initial application were astronomical, and by any measure would have precluded competitive entry into New Jersey. Verizon has now unilaterally reduced its hot cut rates to a level that still far exceeds its rates for the same activities in other states. Verizon offers no evidence that the new hot cut rates are TELRIC-complaint, and the new rates have never even been reviewed, much less approved, by the state commission. The only evidence in the record demonstrates that Verizon's newly proposed hot cut rates remain inflated by numerous non-

TELRIC assumptions and are still at least seven times higher than cost-based hot cut rates. As demonstrated below, Verizon's "DUF," switching and feature service order charges are also substantially inflated as a result of clear TELRIC errors.

Verizon's excessive UNE rates were not the only obstacles to effective local competition in New Jersey. Verizon also failed to demonstrate through either third-party testing or commercial experience, that the hub of its operations support systems – a service order processor unique to New Jersey – can support high-volume, UNE-based entry. Indeed, all available evidence suggested it cannot, for even at the microscopically small order levels to date, Verizon's OSS performance is far worse than what Verizon provides CLECs in Pennsylvania, New York, or Massachusetts, let alone what it provides itself. In particular, Verizon's continuing failure to provide an auditable electronic bill significantly raises its potential rivals' costs and creates a substantial barrier to competitive entry. And Verizon's refusal to commit to performance measures or to a performance assurance plan comparable to what it provides CLECs in New York, as well as its refusal to provide competitors with nondiscriminatory access to interconnection consistent with the Act and the Commission's rules, created additional and significant barriers to entry that further protect Verizon from any meaningful competitive challenge. Verizon's new Application does nothing to allay these concerns.

The bottom line is that the vast majority of Verizon's New Jersey markets for residential local exchange service in New Jersey are effectively closed to new entrants. The unlawful terms and conditions on which Verizon now offers access to its network preclude such competition. Verizon's most recent New Jersey Application thus conflicts not only with the requirement of full checklist implementation, but with the Commission's obligation to ensure that any grant of interLATA authorization is in the public interest. Granting this Application at this time would install Verizon as the only carrier able to offer all customers in its territory one-stop shopping for local and long distance service. With that powerful and unique advantage, Verizon would quickly extend its local monopoly to the long distance market, and then face little, if any, competitive constraints on its ability to raise prices. The Commission should therefore deny Verizon's New Jersey Application.[2]

The balance of these comments is organized as follows. Part I addresses the numerous pricing constraints that prevent meaningful local competition in New Jersey. In particular, this part addresses the two principal ways in which Verizon's UNE rates continue to block competition: (1) the exorbitant non-recurring charges for hot cuts and feature changes and (2) the excessive recurring rates for unbundled switching usage and daily usage files ("DUF"). In particular, Verizon's switching usage rates are inflated by the improper allocation of substantial fixed, non-usage sensitive, vertical feature costs to the switching usage element. And Verizon's DUF rates are inflated by fundamental mathematical and other clear TELRIC errors.

Part II addresses Verizon's continuing lack of compliance with its obligation to provide nondiscriminatory access to its operations support systems. Contrary to its OSS obligations, Verizon fails to provide CLECs with a wholesale bill that is readable, auditable, and accurate. The electronic "BOS BDT" bills provided by Verizon are improperly formatted, preventing AT&T from using them to verify the accuracy of the bills or from inputting them into

[2] The NJBPU has filed a two page letter in support of Verizon's Application. *See* Letter from David Samson (Attorney General of New Jersey) to William F. Caton (Acting FCC Secretary), WC Docket No. 02-67 (April 4, 2002). That letter states only that the NJBPU has not changed its position since it letter supporting Verizon's original application. The letter also takes notice of Verizon's proposed lower hot cut rates. As explained below, and in AT&T's comments and reply comments to Verizon's first application, the NJBPU's support for Verizon's applications is misplaced.

its own internal billing systems. Even the paper bills provided by Verizon (which cannot be used to verify the accuracy of Verizon's bills, given their sheer bulk) are inadequate, because they often erroneously include charges for retail services in wholesale UNE-P bills. This type of discriminatory performance is particularly damaging to competition. By effectively "cramming" charges onto CLECs wholesale bills, Verizon inflates the CLECs' costs – just as if it charged non-TELRIC rates.

Even leaving aside its failure to provide parity of access to billing functions, Verizon cannot show that it has met its OSS obligations through its reported performance data. The data Verizon has provided are unreliable, as evidenced by the continuing stream of change control notices that Verizon has issued to correct errors in its data. Moreover, if anything, the data confirm that Verizon's OSS contains numerous deficiencies that deny parity of access to CLECs.

Part III explains why, apart from the above-described checklist violations, approval of Verizon's application would be inconsistent with the public interest. In addition to the fact that there currently exists only negligible entry in New Jersey, Verizon's performance incentive plan fails to provide adequate assurance that Verizon will comply with its obligations under the Act if its application is approved. Indeed, Verizon's own recent conduct shows that, following any such approval, it is likely to use its monopoly power to inhibit competition and to circumvent any liability under its (already-inadequate) Performance Incentive Plan. Recently, when Verizon still believed that its previous application would be approved, Verizon advised AT&T that it would port numbers on a project basis for a large AT&T customer *only* if AT&T agreed that the data regarding Verizon's performance would be excluded from the metrics set forth in Verizon's monthly performance reports. Only after it was forced to withdraw its previous application – and the day before it filed a new one – did Verizon withdraw its condition. This incident simply illustrates that approving Verizon's application now, when the New Jersey market is still not irrevocably open to competition, will foreclose effective competition in the future.

I. VERIZON HAS NOT SATISFIED ITS BURDEN OF PROVING THAT ITS RECURRING AND NON-RECURRING RATES SATISFY CHECKLIST ITEM TWO.

The demographic characteristics of New Jersey, a wealthy and densely populated state, make it a prime candidate for CLEC entry. But "efficient competitive entry into the local market is vitally dependent upon appropriate pricing." *Michigan 271 Order* ¶ 281. The dearth of local competition in New Jersey results directly from Verizon's competition-foreclosing UNE rates. Those rates alone have long precluded any meaningful competitive UNE-based entry and – even after the long-overdue reductions – still serve to impede competition.

As demonstrated by numerous commenters responding to Verizon's first New Jersey Application, Verizon effectively closed the door on sustainable UNE-loop facilities-based entry strategies with massively inflated non-recurring charges ("NRCs") for hot cuts.[3] Although Verizon has now offered some arbitrary reductions to those astronomically high rates, those lower rates are still far above TELRIC levels (and the levels of Verizon's hot cut charges in other

[3] The Commission has long recognized that regardless of how closely an incumbent LEC's recurring charges are held to efficient forward-looking costs, an incumbent LEC can and will evade competition if it is allowed to increase potential competitor's costs significantly through non-recurring charges. *See, e.g., AT&T Communications,* 103 FCC 2d 277, ¶ 37 (1985) ("It is evident that nonrecurring charges can be used as an anticompetitive weapon to . . . discourage competitors"); Second Memorandum Opinion and Order on Reconsideration, *Expanded Interconnection with Local Telephone Company Facilities,* 8 FCC Rcd. 7341, ¶ 43 (1993) ("absent even-handed treatment, nonrecurring reconfiguration charges could constitute a serious barrier to competitive entry").

states) and preclude sustainable facilities-based entry in New Jersey. Furthermore, Verizon's New Jersey rates include undocumented and non-cost-based NRCs for feature changes that substantially inflate local entrants' costs.

Verizon's recurring charges also cannot be expected to spur meaningful UNE-P based competition for residential customers, because Verizon's newly adopted switching rates are based on cost studies that contain clear TELRIC errors that unlawfully inflate the switching usage component of Verizon's switching rates. Verizon's DUF rates likewise are massively overstated due to clear fundamental TELRIC violations. Given these serious and continuing TELRIC problems with Verizon's rates, its Application must be denied.

A. Verizon's New Jersey Hot Cut Rates Are Not Cost-Based.

The record in the proceeding on Verizon's last New Jersey Application conclusively established that Verizon's state-approved New Jersey hot cut rates ($159.76 without premises visit and $233.12 with a premises visit) were massively inflated by myriad TELRIC-errors. *See Ex Parte* Letter from Robert W. Quinn to William Caton (March 1, 2002), at 2-6 & Walsh Decl. ¶¶ 9-30 (attached to the letter) ("March 1 Walsh Decl."); AT&T Supp. Comments, CC Docket No. 01-347, at 7-15 & Walsh Decl. ¶¶ 4-24 ("March 13 Walsh Decl.").[4] Verizon has since unilaterally reduced its hot cut rate to $35, and in its new application it relies on this new rate – which the New Jersey Commission has never reviewed (much less approved) and which is still substantially higher than the relevant forward-looking costs.[5] *See* VZ Supp. Br. at 12-19; Walsh March 1 Decl. ¶¶ 26-30; Walsh March 13 Decl. ¶ 2. Verizon's $35 New Jersey hot cut

[4] *See also,* AT&T Comments at 11-14; AT&T Reply Comments at 5-9; ASCENT Comments at 2-7; Cavalier Comments at 2-5; Conversant Comments at 2-6; DOJ Eval. I at 7-8.

rate is still substantially higher than that in Pennsylvania ($4.07), Virginia ($13.49), Massachusetts ($15.26), Maryland ($16.22), and Delaware ($22.52). AT&T has demonstrated that, after correcting for the errors that produced Verizon's original inflated hot cut rates (to the extent that those cost studies could be corrected), Verizon's New Jersey hot cut rates should not exceed $4.35.[6] And, Verizon offers no cost studies in support of its new $35 hot cut rate or indeed any evidence that it is TELRIC-compliant. That omission is fatal to Verizon's application.

Verizon defends its new rates on two alternative grounds, neither of which withstands scrutiny. Verizon first claims that *any* discount to its initial hot cut rates necessarily results in TELRIC-compliant rates, because its initial hot cut rates were, in fact, TELRIC-compliant. *See* VZ Supp. Br. at 17. That argument must be rejected out of hand. As noted above, the record in this proceeding conclusively establishes that Verizon's original hot cut rates were not remotely TELRIC-compliant – indeed, Verizon's excessive hot cut rates are one reason why Verizon was forced to withdraw its initial application in the first place. *See, e.g,* Verizon Withdrawal Letter, CC Docket No. 01-347 (dated March 19, 2002) (noting that due to problems with its "non-recurring charge for performing hot cuts" Verizon "hereby provides notice that it is withdrawing its application"). As demonstrated by AT&T and other commenters, Verizon's original hot cut rates were inflated by numerous non-TELRIC assumptions and did not even comply with the conditions mandated by the NJBPU in its UNE rate orders. *See* March 1 Walsh

[5] Verizon's hot cut rate is also higher than the hot cut rates that were in effect prior to the $159.76 and $233.12 hot cut rates that it implemented at the end of last year.

[6] *See* March 1 Walsh Decl. ¶¶ 26-30. As further explained by Mr. Walsh, Verizon's cost studies contain other flaws that could not be corrected. Using the TELRIC-compliant cost studies supported by AT&T in the New Jersey UNE rate proceeding shows that Verizon's hot cut rates should not exceed $2.77. *See* Walsh March 1 Decl. n.2.

Decl. ¶¶ 9-30; March 13 Walsh Decl. ¶¶ 4-24.[7] On this record, there can be no reasoned finding that Verizon's initial hot cut rates comply with TELRIC principles. Thus, Verizon's claims that its new hot cut rate must be TELRIC-compliant simply because it is lower than its initial hot cut rates must be rejected.

Verizon next seeks to justify its $35 hot cut rate by comparing it to the New York hot cut rate. But the New York hot cut rate is not a valid benchmark against which to justify Verizon's New Jersey hot cut rates. Verizon frankly concedes that its New York hot cut rates are the product of a settlement, are not based on any cost study and have never been found to be TELRIC-compliant by the New York state commission (or anyone else). *See* VZ Supp. Br. at 18. Nor has this Commission approved those rates in a prior Section 271 application. Verizon's New York hot cut rate, therefore, plainly fails to satisfy the Commission's criteria for benchmark rates, and cannot legitimately be used to justify Verizon's New Jersey hot cut rates. *See, e.g., Rhode Island 271 Order* ¶ 38 ("To determine whether a comparison is reasonable, the Commission will consider whether . . . the Commission has already found the rates in the comparison state to be TELRIC-compliant").

Any attempt to justify Verizon's New Jersey hot cut rates based on Verizon's New York hot cut rates would be especially inappropriate. Verizon's New York hot cut rates represent one small component of a much larger comprehensive settlement that resolved a number of issues that were still open subsequent to the New York PSC's final pricing order. *See* Order Instituting Verizon Incentive Plan, State of New York Public Service Commission, Case Nos. 00-C-1945 & 98-C-1357 (Issued February 27, 2002) ("*Joint NY Settlement Agreement*").

[7] *See also,* AT&T Comments at 11-14; AT&T Reply Comments at 5-9; ASCENT Comments at 2-7; Cavalier Comments at 2-5; Conversant Comments at 2-6; DOJ Eval. I at 7-8.

As with any settlement agreement, the final terms of the *Joint NY Settlement Agreement* reflect numerous compromises. For example, in addition to the $35 hot cut rate, Verizon promised, among other things, to not seek reconsideration or appeal of the New York commission's final UNE rate order, and to implement the rates set by that order and to continue offering UNE-P regardless of any pending proceedings. Here, Verizon has plucked one piece of that settlement agreement – the hot cut rate – and encourages the Commission to rely on that disembodied term to justify Verizon's overstated New Jersey hot cut rate. In effect, Verizon is seeking to import one favorable piece of the comprehensive *Joint NY Settlement Agreement* into New Jersey without importing any of the substantial concessions Verizon promised in order to obtain those above-cost rates. Verizon already has informed the New Jersey Board that, in contrast to its promise in New York, Verizon does not intend to waive its right to seek appeal of the NJBPU's final order even though the NJBPU specifically conditioned its support of Verizon's Application on such a waiver. Given the inherent compromises contained in the *Joint NY Settlement Agreement*, Verizon's claim that one such term from that agreement can legitimately be exported to other states without the rest of the terms in that agreement must be rejected.

Moreover, allowing Verizon to import the hot cut terms of the comprehensive *Joint NY Settlement Agreement* also would be contrary to the public interest. Regardless of the benefits of potential settlement agreements in a particular state, CLECs are unlikely to support any such comprehensive agreements in the future for fear that specific terms of an agreement will be used to justify above-TELRIC rates in other states. Indeed, Verizon's attempt to do so here will likely impede its ability to obtain support from CLECs for future agreements. In this regard, Verizon's mischaracterization of CLEC support for the comprehensive *Joint NY Settlement Agreement* as support for the specific hot cut rates in that agreement is particularly troubling. *See* VZ Supp. Br. at 18-19. To be sure, AT&T did publicly support Verizon's promise to implement much needed switching and loop rate reductions in New York as provided in the New York final order and the joint settlement agreement. But AT&T has never stated, nor would it, that Verizon's New York hot cut rates are sufficient to support sustainable state-wide UNE-L entry in New York.

Finally, even if (contrary to fact) Verizon had provided sufficient evidence that its newly proposed $35 hot cut rate is TELRIC-compliant, its Application must still be rejected. Verizon has made no binding commitment to actually implement that new rate for any period of time. To the contrary, Verizon has only submitted a letter to the NJBPU promising to implement those reductions for the lesser of two years or the time at which the NJBPU establishes new hot cut rates. Verizon has not sought to amend its interconnection agreements to incorporate the new rate. Presumably, Verizon could submit a second letter to the NJBPU the day after its Section 271 Application is approved that revokes the hot cut rate reductions. Thus, until Verizon makes an enforceable commitment to reduce its New Jersey rates to $35, that proposed rate cannot be considered in reviewing Verizon's New Jersey Application.

B. Verizon's New Jersey Daily Usage File Rates Are Not Cost-Based.

Verizon's New Jersey daily usage file ("DUF") charges also exceed those that any reasonable application of TELRIC principles would have produced. *See* Baranowski Decl. ¶ 8-13. The DUF charge is a fee that Verizon charges CLECs for information regarding CLECs' usage. *See id.* ¶ 8. CLECs use that information to verify the accuracy of Verizon's bills and as a basis for billing their own customers.

According to Verizon's New Jersey DUF cost study, Verizon processes DUF records for New Jersey, Maryland and Pennsylvania in its southern region using the same facilities. *See* Baranowski Decl. ¶ 9. The per unit DUF charge for this group, therefore, should reflect the total cost of processing all DUF records in the centralized facility spread over all DUF records that were processed. *See id.* As a result, there should no material in-region variation in the per unit DUF rates charged by Verizon. Verizon itself has confirmed that its southern region DUF rates are computed "using regionwide data." *VZ March 18 Letter* at 5. Yet, Verizon's New Jersey DUF rates result in monthly per line DUF rates that are 5 times higher than in Pennsylvania, another state in Verizon's southern region where Verizon has obtained Section 271 approval. *See id.*

As Verizon has recently stated, DUF costs are also declining. *VZ March 18 Letter* at 5.[8] This is to be expected in a declining cost industry such as telecommunications and casts a further shadow over Verizon's increased DUF rates in New Jersey. According to Verizon, DUF rates "reflect the costs of the computer hardware and software required to create the usage information by carrier, and then transmit it to the carrier." *Id.* It is beyond dispute that computer hardware and software costs have declined since 1997. Also, as these underlying costs of DUF are heavily non-traffic sensitive – *i.e.*, fixed, over time – with increasing volumes it would be expected that the DUF rates would decline. Consistent with this fact is Verizon's statement that DUF rates proposed in New York and Massachusetts were lower than in the past because "the estimate of the amount of time required to process a CLEC's request for usage information is now shorter, resulting in lower costs." *Id.* The same, of course, should hold true for Verizon's

[8] Letter from Richard T. Ellis to William Caton, CC Docket No. 02-7 (March 18, 2002) ("*VZ March 18 Letter*").

New Jersey systems notwithstanding the alleged use of different methodologies between the former Bell Atlantic North and Bell Atlantic South regions.

One reason why Verizon's DUF rates are so overstated is that the calculations for Verizon's "DUF Network Data Mover Cost Per Message" contain an error in the calculation of the DASD (DISK) Maintenance component that overstates the cost of that DUF rate component by nearly 100 times. *See* Baranowski Decl. ¶ 10. Specifically, in converting the maintenance cost from a cost per gigabyte to a cost per record, Verizon erroneously calculated the number of records for which cost would be incurred as *** *** instead of *** ***. *See id.* This error generated maintenance costs of millions of dollars instead of thousands of dollars. *See id.* Correcting this error reduces Verizon's Network Data Mover Costs per Record by about *** *** percent. *See id.*

Verizon's New Jersey DUF rates also are inflated by Verizon's undocumented "CLEC Support" labor costs that are spread over only a small fraction of the number of messages actually processed within its system. *See* Baranowksi Decl. ¶¶ 11-13. There are three clear TELRIC violations that flow from these CLEC Support costs. *First*, the CLEC Support costs reflect 13 full time employees that purportedly perform tasks such as "ongoing support and maintenance of DUF," "file control and monitoring" and "file processing and file correction." *See id.* ¶ 11. Nowhere in its study has Verizon attempted to demonstrate the need for this large, specialized CLEC-dedicated staff. *See id.*

Second, Verizon spreads the cost of that CLEC-dedicated staff over something called "Regional CBO Message Demand." *See* Baranowski Decl. ¶ 12. Verizon does not provide any support for this demand estimate other than to say that it has been provided by some

"Project Manager." *See id.* As a preliminary matter, it is doubtful that Verizon has a dedicated CLEC support staff that does not address issues associated with incumbent LEC, interchange carrier and other DUF records. *See id.* And Verizon has offered no evidence to the contrary. Those employees likely work on all DUF records. *See id.* Accordingly, those costs should be spread over all DUF records, not some arbitrary subset of Regional CBO Messages. *See id.* And in any event, even if those labor costs could properly be spread over only CLEC records, there is no evidence that the Regional CBO demand correctly represents the number of CLEC records, and that estimate likely severely understates CLEC demand. *See id.* By spreading costs over only a fraction of throughput, Verizon has severely overstated the cost per message. *See id.*

Third, Verizon has not demonstrated that the labor charges it seeks to recover via the CLEC Support charge are not already captured in the expense factors within the annual cost factors for other UNEs. *See* Baranowski Decl. ¶ 13. Verizon's cost study makes no explicit reduction to remove the administrative labor costs from its embedded DUF administration costs. *See id.* It is thus likely that these costs are already included with other UNEs and should not be included in another UNE charge. *See id.*

C. Verizon's Switch Usage Rates Are Inflated By Serious TELRIC-Errors.

As demonstrated in the attached declaration of Michael Baranowski, Verizon's New Jersey switch usage rates are substantially inflated by fundamental TELRIC violations. *See* Baranowski Decl. ¶¶ 3-7. In particular, Verizon's New Jersey switch usage rates improperly reflect fixed, non-usage sensitive, costs of vertical features that should not be included in the usage element. *See id.* It is not surprising, therefore, that Verizon's New Jersey switching usage rates are about twice those in Pennsylvania and New York. *See* Baranowski Decl. ¶ 3.

In its *Local Competition Order* (¶ 743), the Commission recognized "that incumbent LECs' rates for interconnection and unbundled elements must recover costs in the manner that reflects the way they were incurred." Thus, the Commission concluded that, to avoid uneconomic incentives, usage sensitive rates should be recovered in usage rates and non-usage sensitive rates should be recovered on a flat-rated basis. *See id.* ¶¶ 744-746. Verizon's switching cost model violates this fundamental principle by recovering fixed, non-usage sensitive vertical features costs in its usage-sensitive switching rates rather than in its flat-rated port rates.

The switches used by Verizon are capable of providing vertical features, *e.g.*, call waiting, call forwarding, and caller ID. *See* Baranowski Decl. ¶¶ 3-7. For the most part, once the majority of these vertical features are "activated," Verizon incurs no additional usage-related costs for those features. *See id.* Accordingly, vertical features costs should be recovered through Verizon's flat-rated port charges, and should not be recovered through switch usage rates. *See id.*

Verizon has not submitted its switching cost models ("SCIS Models") in this proceeding. Had Verizon submitted those cost studies, AT&T could have shown the extent to which Verizon's improper inclusion of vertical feature costs in Verizon's switching usage rates substantially inflates those rates above TELRIC levels. *See id.* By failing to submit the SCIS model, Verizon cannot possibly meet its burden of proving that its switching rates are TELRIC-compliant.

Predictably, Verizon claims that these serious TELRIC-errors can be brushed aside because the total non-loop rates (the sum of switching usage, switch port, transport, and signaling) in New Jersey are lower than those in other states. *See* Verizon Supp. Br. at 10-11; Garzillo/Prosini Decl. ¶¶ 30-36. To be sure, the Commission has, in the past, relied on state-to-state comparisons of total non-loop rates in recognition of the fact that there may be legitimate differences in the ways states allocate such costs among usage, port and other switching-related charges. But that does not mean that fundamental TELRIC violations or a gross misallocation of costs that substantially inflate a particular switching-related element can be ignored entirely in all circumstances. On the contrary, even where benchmarking analyses show no substantial differences in the total non-loop rates of comparable states, clear TELRIC errors in the allocations of costs among non-loop elements can have a substantial deleterious effect on competitive entry. Benchmarking total non-loop rates is appropriate only where the allocation among elements can be said to fall within a reasonable range of such allocations.

The Commission itself has recognized the serious competitive harms caused by overstating usage sensitive rates. *See Local Competition Order* ¶ 74 (noting that usage sensitive rates should not include non-usage sensitive costs in order to ensure that local entrants "have the right incentives to construct and use public network facilities efficiently, and [to] prevent incumbent LECs from inefficiently raising costs in order to deter entry"). That is why the Act does not allow BOCs to offset rate elements that are priced above costs with lower rates for other elements. The Act requires BOCs to provide cost-based rates for each rate element. *See* 47 U.S.C § 252(d)(1) (stating that BOCs satisfy sections 251 and 252 of the 1996 Act (and hence Checklist Item 2) only if they are "based on the cost . . . of providing . . . *the* network element")(emphasis added). Indeed, the whole purpose of unbundling is to allow an entrant to purchase – at cost-based rates – only the elements necessary to implement its particular entry strategy. If a BOC were free to evade the requirement to offer each element that qualifies for unbundling at cost-based rates by offering some elements at low rates and others at inflated rates, as explained above, the BOC would have the ability to tailor its rates to impede the entry strategies that posed the greatest risk to its local monopolies.

Potential entrants are not indifferent as to the size of each non-loop rate element. Where, as here, a BOC's switching usage rates are inflated by fundamental TELRIC errors and illegitimate allocations of fixed costs to the switching usage category, efficient new entrants will be deterred from serving high usage customers. In this regard, it is ironic that these high usage customers are the same customers that Verizon has claimed CLECs can and should profitably serve on a targeted basis. Specifically, as demonstrated by WorldCom's January 14, 2002 comments (at 5-7), new UNE-P entrants cannot profitably serve residential customers in New Jersey. Verizon's response to this fact was that new entrants can profitably serve specific high value customers that purchase several features, including unlimited local calling. *See* Garzillo/Prosini Reply Decl. CC Docket No. 01-347, ¶¶ 30-33. Setting aside the fact that Verizon's analysis is flawed for multiple reasons, *see Ex Parte* Letter from Robert W. Quinn to William Caton (March 1, 2002), at 20-23, Verizon's suggestion that CLECs should target the very customers that Verizon's switching usage rates protect against competitive entry underscores both the seriousness of the TELRIC violation here and the impropriety of looking at benchmarks of total non-loop costs where, as here, there have been clear gross misallocations of fixed costs to usage rates.

Verizon's misallocation of fixed feature costs to usage elements guarantees overrecovery. The amount of usage has increased substantially over the past several years, and given the continued growth of the internet and other telecommunications applications, that usage is likely to continue to grow substantially in the future. By improperly allocating switching costs to switching usage, therefore, Verizon's over-recovery of the fixed costs of vertical features that are recovered through switching usage rates will increase as usage continues to grow.

D. Verizon's Non-Recurring Service Order Charges Are Massively Inflated Above TELRIC Levels.

Verizon's New Jersey UNE rates include a non-recurring service order charge of $7.71 (normal) and $11.02 (expedited) for feature changes. *See* Walsh Decl. ¶ 7. This charge is not supported by the rate calculation set forth in the workpapers accompanying Verizon's non-recurring compliance filing. *See id.* ¶¶ 6-12. Those workpapers demonstrate that the charge for a subsequent feature change by an existing CLEC customer should be, at most, a *de minimus* amount based on the insignificant work effort. *See id.* ¶¶ 7-9. That is confirmed by the fact that Verizon imposes only an $0.83 charge to process an *entire* initial service order, including whatever features the customer has ordered. *See id.* Verizon claims to incur no non-recurring charge for setting up features when a CLEC initially orders features for its customer, but $7.71 or more every time that the CLEC customer changes a feature. *See id.* Certainly, the costs associated with processing a feature change request can be no more than the costs of processing a much more complex initial service order, and thus Verizon's feature charge is, at best, nearly 10 times too high. *See id.* ¶ 7. As demonstrated by Richard Walsh in the state proceeding, the correct feature service order change charge should not exceed $0.27. *See id.* ¶ 10.

The existence of this unfounded feature change charge can have a substantial effect on new entrants' costs. *See id.* ¶ 12. Verizon's $7.71 charge appears to apply every time that a CLEC customer requests a feature change. *See id.* That charge materially increases CLEC costs even for customers that request only one feature change each year. *See id.* Of course, for customers requesting more frequent feature changes, the impact of this charge is multiplied accordingly. Because Verizon's own cost study demonstrates that no such charge, or at most the charge applicable to less than one minute of work, should be assessed to feature changes on existing accounts, Verizon has failed to satisfy its burden of proving that the feature change non-recurring cost is TELRIC-compliant.

II. VERIZON IS NOT PROVIDING NONDISCRIMINATORY ACCESS TO ITS OPERATIONS SUPPORT SYSTEMS.

Verizon also fails to satisfy item 2 of the checklist because it does not provide nondiscriminatory access to its OSS. Contrary to its OSS obligations, for example, Verizon does not produce a readable, auditable, and accurate wholesale bill. Even leaving that deficiency aside, Verizon cannot demonstrate compliance with its OSS obligations, because it remains unable to provide complete, accurate, and timely performance data. Finally, even if they are accurate and reliable (and they are not), Verizon's reported performance data show that it denies parity of access to its OSS in several significant respects.

A. Verizon Fails To Provide Nondiscriminatory Access To Billing Functions.

The Commission has held that "Wholesale bills are essential" to CLECs, because CLECs "must monitor the costs they incur in providing services to their customers." *Pennsylvania 271 Order* ¶ 13. Thus, a BOC's obligation to provide nondiscriminatory access to its OSS includes the obligation to provide CLECs with "complete, accurate, and timely wholesale bills." *Id.* Any applicant for Section 271 authority "must demonstrate that it can produce a complete, auditable and accurate wholesale bill in order to satisfy its nondiscrimination requirements under checklist item 2." *Id.* ¶ 22.

Verizon, however, has not provided readable, auditable wholesale bills. First, Verizon's "BOS BDT" electronic bills are not properly formatted, thereby preventing AT&T

from using them to verify the accuracy of Verizon's charges. Although AT&T has pressed Verizon for more than a year to fix these deficiencies, Verizon has still not done so. Kamal Decl. ¶¶ 14-21.

For example, Verizon has routinely failed to provide a telephone number for every charge that is listed on the bill. As a result, AT&T has been unable to efficiently reconcile those charges for which Verizon has failed to provide a telephone number. In each such instance, AT&T has incurred additional administrative costs to manually research the telephone number that should be associated with the appropriate code before AT&T could meaningfully use the billing information. *Id.* ¶ 15.

Although Verizon has contended that it recently fixed this problem, it is not yet clear whether it has, in fact, done so. Indeed, the problem still occurs on the electronic bills that AT&T receives in Pennsylvania. *Id.* ¶ 16.

In addition, Verizon's electronic bills are incorrectly formatted in violation of industry billing guidelines. *Id.* ¶ 16. Because AT&T has designed its own internal billing systems to reflect industry standards, Verizon's inclusion of non-industry standard codes on the electronic bills precludes AT&T from auditing the bills and from inputting the data from the bills into its own systems. *Id.*

Verizon has not fixed these coding problems on its electronic bills, even though AT&T has repeatedly raised the issue with Verizon for more than a year. *See id.* ¶¶ 18-19. Until these defects have been eliminated, there is no reason why AT&T would wish to designate the BOS BDT bill as the bill of record, despite Verizon's announcement in August 2001 that CLECs could do so. *Id.* ¶ 19. Verizon's promise that the coding problems will be corrected by the releases it has scheduled for implementation in March and April 2002 is no substitute for actual performance. *See, e.g., Michigan 271 Order* ¶¶ 55, 179. Even after Verizon implements its promised "fixes," it will take several billing cycles before any determination can be made as to whether the fixes actually work. *Id.* ¶ 20.[9]

Until Verizon corrects these problems, CLECs such as AT&T have no viable means of determining whether the charges on the electronic bills are accurate. *Id.* ¶¶ 21, 23. As a practical matter, CLECs cannot use paper bills to verify Verizon's charges, because auditing the thousands of pages of paper bills (which can be ten feet high for a single month) would be prohibitively costly and time-consuming. *Id.* ¶ 12. Verizon's manual adjustments to its electronic bills are no substitute for accurate and readable electronic bills that CLECs themselves can audit. For example, CLECs have no means of determining the extent and accuracy of any manual adjustments made by Verizon. *Id.* ¶ 21. In addition, the reviews of Verizon's bills conducted by KPMG and PriceWaterhouseCoopers provide no basis for concluding that the electronic bills are accurate. *Id.* ¶ 22.

Second, Verizon does not even provide CLECs with accurate wholesale *paper* bills. Under the Commission's precedents, any CLEC ordering the UNE platform is entitled to provide vertical features to its customers without being assessed additional charges by the BOC. *See, e.g., Local Competition Order* ¶¶ 412-413; Kamal Decl. ¶ 25. However, Verizon's paper bills to AT&T have included charges *both* for unbundled switching at UNE rates *and* for vertical

[9] Verizon's own billing expert acknowledged less than a year ago, in Section 271 proceedings before the Pennsylvania Public Utilities Commission, that "several cycles" of billing must be completed before any conclusive judgment can be made on whether newly implemented system changes have been successful. *See Pennsylvania 271 Order* ¶ 37 n.141 (discussing April 2001 testimony of Verizon's witness Warren Geller before Pennsylvania PUC); Kamal Decl. ¶ 20.

features at retail rates. Kamal Decl. ¶ 26. Verizon's inclusion of these retail charges appears to reflect a systemic problem, since such inclusion has occurred only when the customer is taking certain services, such as call waiting, caller I.D., or touch-tone. *Id.* ¶¶ 26-27.

The erroneous inclusion of retail charges on the paper wholesale bills has required AT&T to file numerous claims with Verizon for adjustment of the charges each time that such erroneous billing occurs. Because a separate claim must be submitted for each end-user account that it erroneously billed, AT&T must expend substantial time and resources to have the bills adjusted. Before any claim can be filed, for example, AT&T's billing analysts must manually review stacks of paper bills, identify the erroneous charges, and complete the appropriate claims form. *Id.* ¶ 28. Because of the time and expense required, AT&T has been able to submit claims only for a small sample (approximately 5 percent) of the entire bill. Thus, the claims submitted by AT&T vastly understate the nature and extent of the problem. *Id.*

Although Verizon has already acknowledged that many of AT&T's claims for adjustments are proper (and that the retail charges were billed in error), Verizon exacerbates the problem by its inconsistent treatment of AT&T's claims. Depending upon the Verizon representative handling a particular claim, Verizon sometimes provides adjustments for all months since the customer migrated to AT&T, while on other occasions Verizon adjusts the account only for the most recent month's bill where the error was detected by AT&T. *Id.* ¶ 29. In the latter situations, AT&T is required to expend yet more time and resources (in addition to the time and resources already expended on submitting the original claim) to ensure that the bill is fully adjusted. *Id.* ¶¶ 29-30.

Verizon's inconsistent treatment of claims imposes an unreasonable burden on AT&T. In any reasonable commercial relationship, a supplier such as Verizon would determine the root cause of this type of systemic error and credit all inappropriate charges, rather than force the customer to play detective for each and every bill received. *Id.* ¶ 30.

The deficiencies in Verizon's paper bills effectively result in "cramming" – charging AT&T for services that it did not order. These deficiencies force AT&T and other CLECs into a Hobson's choice: either they must consistently overpay for services essential to serve local customers, or they must expend extraordinary time and expense to minimize overpaying, thereby being placed at a competitive disadvantage to Verizon. Under either scenario, Verizon's inclusion of erroneous retail charges on its bills is plainly a denial of nondiscriminatory access to billing functions, because it imposes unnecessary and significant costs on AT&T that Verizon does not incur in its own retail operations. *Id.* ¶¶ 28-31.

B. Verizon's Performance Data Are Unreliable.

The Commission has repeatedly held that the most probative evidence that a BOC is providing nondiscriminatory access to its OSS, and that its OSS functions are operationally ready, is actual commercial usage.[10] However, in their comments on Verizon's prior application, AT&T and other CLECs demonstrated that Verizon could not properly rely on its reported performance data as evidence that it had met its OSS obligations – or any of its other obligations under Section 271. The data, in fact, are so unreliable that they cannot reasonably be considered a reflection of Verizon's actual performance. To the contrary, the continuing stream of Verizon's metrics change control notices – which are replete with admissions regarding

[10] *See, e.g., Pennsylvania 271 Order*, App. C ¶ 31; *New York 271 Order* ¶ 89; *Michigan 271 Order* ¶ 138.

Verizon's error-ridden performance monitoring and reporting processes – showed that its performance reports are inaccurate, incomplete, and untrustworthy.[11]

Nor could KPMG's third-party metrics test be considered persuasive evidence of the reliability of Verizon's data, since KPMG in many cases failed to detect the errors that Verizon admitted in its change control notices and its *ex parte* submissions to the Commission. AT&T Initial Comments at 26; AT&T Reply Comments at 26. The probative value of KPMG's test is further undermined by its inherent limitations, including the limitation of the metrics limitation component of the test largely to a simple arithmetic recalculation of performance results that did not consider, for example, whether Verizon used the correct retail analogue in calculating its performance data. AT&T Initial Comments at 26 & Nurse/Bloss Decl. ¶¶ 38-41.

In its Consultative Report on Verizon's previous application, the BPU disregarded this evidence and dismissed concerns about the integrity and reliability of Verizon's data:

> KPMG's favorable report and successful replication [of Verizon's submetrics] show that implementation problems identified by Verizon NJ have been or are being resolved. Any remaining concerns of the CLECs are addressed by the Incentive Plan, which contains provisions requiring payments to a state fund for C2C reports that are late, or inaccurate or incomplete.[12]

Subsequent events, however, have simply verified what the evidence already showed regarding Verizon's previous application: the "implementation problems" cited by the Board are not being resolved, and the provisions of Verizon's Incentive Plan are inadequate to

[11] *See, e.g.*, Comments of AT&T Corp. filed January 14, 2002, in CC Docket No. 01-347 ("AT&T Initial Comments"), at 25-26 & Bloss/Nurse Decl. ¶¶ 12-37 & Att. 3; Reply Comments of AT&T Corp. filed February 1, 2002, in CC Docket No. 01-347 ("AT&T Reply Comments"), at 23-26.

[12] Consultative Report of the New Jersey Board of Public Utilities, filed January 14, 2002, in NJBPU Docket No. TO01090541 and FCC CC Docket No. 01-347, at 80-81.

compel Verizon to report complete and accurate performance data. Instead, it is apparent that Verizon views the payments under the Plan for incorrect or incomplete reports simply as a cost of doing business that is preferable to implementing the software and/or hardware fixes required to ensure the reporting of reliable performance data.

Since January 14, 2002, Verizon has issued approximately 26 change control notices to perform data calculation corrections – more than two per week. Under the applicable Metrics Change Control Process business rules, a Data Calculation "corrects a *deficiency* in the calculation or the completeness of a metric. These corrections ensure that Verizon's Carrier to Carrier Metrics adhere to the spirit and the letter of the commission ordered guidelines."[13]

The corrections in Verizon's 26 change control notices affect numerous metrics covering the entire range of OSS functions, from pre-ordering to maintenance and repair and billing. These notices are listed in the following table.

1	CCNJ-2001-00900-Pre-Ordering
2	CCNJ-2001-02320-Ordering
3	CCNJ-2001-02791-Provisioning
4	CCNJ-2001-02839-Provisioning
5	CCNJ-2001-03230-Ordering
6	CCNJ-2001-03248-Pre-Ordering
7	CCNJ-2001-03258-Pre-Ordering
8	CCNJ-2001-03260-Provisioning
9	CCNJ-2001-03306-Provisioning

1	CCNJ-2002-03244-Billing
2	CCNJ-2002-03416-Ordering
3	CCNJ-2002-03601-Maintenance
4	CCNJ-2002-03613-Maintenance
5	CCNJ-2002-03614-Provisioning
6	CCNJ-2002-03655-Maintenance
7	CCNJ-2002-03758-Pre-Ordering
8	CCNJ-2002-03787-Maintenance
9	CCNJ-2002-03843-Provisioning
10	CCNJ-2002-03890-Pre-Ordering
11	CCNJ-2002-03909-Network
12	CCNJ-2002-03959-Provisioning
13	CCNJ-2002-04033-Ordering
14	CCNJ-2002-04039-Ordering
15	CCNJ-2002-04040-Ordering
16	CCNJ-2002-04067-Provisioning

[13] *See* Metrics Change Control Notification Process, located at http://www.bpu.state.nj.us/ telecommunications (emphasis added).

| 17 | CCNJ-2002-04082-Maintenance |

Copies of the notices are also attached hereto as Attachment 1.

As previously indicated, these notices are but the latest in a continuing stream of data calculation corrections that VNJ has issued during the last six months. *See* AT&T Initial Comments, Bloss/Nurse Decl. ¶¶ 24-37 & Att. 3 (describing corrections already issued at time of Verizon's previous applications). Given Verizon's own admissions of numerous data calculation errors in these notices, it clearly is not reporting data that are complete, accurate, and reliable.

Although Verizon has previously asserted that these notices demonstrate its commitment to providing accurate performance reports, the errors described in the notices show – if anything – that Verizon has not committed to implement a sound quality assurance program or to provide the reliable data necessary for the Commission to measure Verizon's actual performance. That lack of commitment is clearly due to the insufficiency of the payments in the Incentive Plan for incorrect reporting, since Verizon would have acted otherwise if its payments exceeded the costs required to fix its systems. The new notices also provide further confirmation of the inadequacy of KPMG's metrics testing, which failed to undercover these problems.

Even though the Carrier-To-Carrier Guidelines were adopted two years ago, Verizon has still not generated accurate and reliable performance reports. For these reasons, Verizon's reliance on its reported data to demonstrate that it is providing nondiscriminatory access to OSS is misplaced.

C. Verizon's Own Reported Data Show That It Is Not Providing Nondiscriminatory Access To Its OSS.

Even assuming *arguendo* that Verizon's reported performance data are accurate and reliable, its reported data for recent months (like its reported data for previous months) show that, in numerous significant respects, Verizon denies parity of access to its OSS. Although Verizon maintains that the reported data shows that its performance "continues to be excellent" (Application at 4), the data demonstrate that the performance of its OSS continues to be inadequate to provide CLECs with a meaningful opportunity to compete.[14]

The total flow-through rate for UNE orders remains unreasonably low. The rate was only 51.35 percent in December 2001, and then *decreased* to only 35.78 percent in January 2002. Although the total flow-through rate increased to 53.95 percent in February 2002 (when volumes decreased by almost 40 percent from the January levels), more than 46 percent of CLEC local service requests ("LSRs") fell out for manual processing during that month. *See* Application, Supp. App. B, Tab 3, p. 153. Even the "simple" flow-through rate (for non-complex orders) in New Jersey was 52 percent in February 2002 – and that percentage was the highest reported by Verizon since April 2001. *Id.* By contrast, Verizon's performance reports for New York, Pennsylvania and Massachusetts state that the total flow-through rates in those states in February 2002 were more than 90 percent, 76 percent, and 74 percent, respectively – even though the order volumes in those states are substantially higher than those in New Jersey. *See* AT&T Reply Comments, Att. 4.

Verizon's rejection rate for UNE orders decreased from 40.86 percent in December 2001 to 35.55 percent in January 2002 – but then *increased* to 38.39 percent in February. Application, Supp. App. B, Tab 3, p. 150. That percentage is unsatisfactory by any standard. By contrast, the rejection rates in January and February 2002 for New York,

[14] *See* AT&T Initial Comments at 20-23 & Kirchberger/Nurse/Kamal Decl. ¶¶ 61-115; AT&T Reply Comments at 22-23 (describing OSS deficiencies reflected in Verizon's reported data for months through December 2001).

Pennsylvania, and Massachusetts have been approximately 14 percent, 24 percent, and 19 percent, respectively – despite the substantially higher order volumes submitted in those states. *See* AT&T Reply Comments, Att. 4.

In January and February 2002 – as has been the case for every month since June 2001 – Verizon failed to meet the applicable parity standard for Performance Measurement OR-4-06 for UNEs, which measures the average time from work completion in the Service Order Processor to bill completion. The disparity reported for January (nearly 13 hours) was the largest reported for any month between June and February, and the disparity reported for February (more than 9 hours) was the second largest. Application, Supp. App. B, Tab 3, p. 151.

Verizon continues to deny parity with respect to the average "offered" interval, and average "completed" interval, for hot cut loops where no dispatch is required. Verizon has not met the parity requirements for these metrics for *any* month from April 2001 through February 2002. *Id.*, pp. 157, 159. Similarly, the average "offered" interval for 2-wire xDSL loops has been consistently (and substantially) longer for CLECs than for Verizon for every month from April 2001 through February 2002. *Id.*, p. 182.

Verizon failed to meet the BPU's parity standard regarding the percentage of repeat trouble reports within 30 days for loops for every month from April 2001 through January 2002. Only in February 2002 did Verizon meet the benchmark (and, even then, the percentage was still slightly higher for CLECs than for Verizon's retail operations). *Id.*, p. 220.

Verizon maintains an OSS in which nearly 40 percent of UNE orders are rejected, nearly 50 percent of non-rejected UNE orders fall out for manual processing, and loops are not provisioned on a nondiscriminatory basis. In view of these deficiencies, Verizon cannot reasonably be found to have met its OSS obligations in New Jersey.

III. APPROVING VERIZON'S APPLICATION WOULD CONTRAVENE THE PUBLIC INTEREST BECAUSE COMPETITION IS FORECLOSED IN NEW JERSEY AND BECAUSE VERIZON HAS FAILED TO SATISFY ITS OBLIGATIONS UNDER ITS PERFORMANCE ASSURANCE PLAN BY PRESSURING CLECS TO EXCLUDE "PROJECT" ORDERS FROM ITS PERFORMANCE MEASUREMENTS.

The record in the proceeding that led to the withdrawal of Verizon's first New Jersey Application shows that there is a final, independent reason why the Commission should deny Verizon's application. Even if the Commission could rationally find that Verizon had fully implemented its obligations under the competitive checklist, including its duty to set cost-based rates within the range that a reasonable application of TELRIC would produce or to provide nondiscriminatory access to its operations support systems, the record here precludes any finding that granting Verizon's application is "consistent with the public interest, convenience and necessity." 47 U.S.C. § 271(d)(3(C)).

The reason is straightforward. At the heart of the public interest inquiry, as Congress conceived it and as this Commission has explained, is a determination of whether, notwithstanding checklist compliance, the local market is in fact fully open to competition. Unless the Commission can confidently make such a determination, any grant of interLATA authorization is not only premature but wholly at odds with the fundamental premise of the Act.

The first step in the public interest inquiry is therefore to assess the actual state of local competition. Here the record shows that residential competition is almost non-existent. In particular, less than 1/100 of 1 percent of the residential lines in Verizon's New Jersey service territory are served by facilities-based competitors or UNE-based competitors. The record further confirms, moreover, that the absence of virtually any facilities or UNE-based residential competition is *not* the result of neutral business considerations uniquely within the control of new entrants, *Michigan 271 Order* ¶¶ 385-391, but is due to Verizon's anticompetitive resistance and refusal to open local residential markets in New Jersey to competitors. *See* AT&T at 8-10. Indeed, the record establishes that Verizon's New Jersey rates effect a price squeeze that makes competitive entry into New Jersey economically unfeasible for new entrants. *See* WorldCom January 14, 2002 comments at 5-7. Accordingly, approval of this Application is not in the public interest.

In addition, the Commission has repeatedly held that, in determining whether approval of a Section 271 would be consistent with the "public interest, convenience, and necessity," one factor that it will consider is whether the Commission has "sufficient assurance" that a BOC will continue to satisfy the requirements of Section 271 after entering the long-distance market. *See, e.g.*, *Arkansas/Missouri 271 Order* ¶ 127; *Massachusetts 271 Order* ¶ 233; *Michigan 271 Order* ¶ 399. However, as AT&T has previously demonstrated, Verizon's Performance Incentive Plan contains inherent defects that preclude it from giving Verizon an incentive to comply with Section 271 in the future – and thus cannot serve as an effective deterrent to "backsliding."[15]

Indeed, recent conduct by Verizon shows that if its application is approved, it will fail to comply with Section 271 in the future. Verizon's conduct manifests its intention to use its monopoly power not only to exclude competition, but also to escape liability under the already-inadequate Performance Incentive Plan.

[15] *See* AT&T Initial Comments at 24-29; AT&T Reply Comments at 27-32.

Specifically, when a large New Jersey company recently decided to switch its local service from Verizon to AT&T, AT&T requested Verizon to have the number porting given special handling on a project basis, given the substantial number of lines involved. Only if the number porting was handled on a project basis could the work be completed efficiently and according to the customer's needs. Regan Decl. ¶¶ 4-5. AT&T made this request in January 2002 – while Verizon's first application for Section 271 authority was still pending. *Id.* ¶ 5.

During negotiations, however, Verizon advised AT&T that it would give the project special handling *only* if AT&T agreed that Verizon's performance would be excluded from the metrics in the Carrier-To-Carrier Guidelines ("Guidelines"), which Verizon is required to report on a monthly basis. *Id.* ¶ 6. This exclusion would have had the effect of masking Verizon's true performance, while shielding Verizon from any payments that it otherwise would have been required to make under the Incentive Plan for poor performance during the project. *Id.*

Verizon's condition was a transparent attempt to escape accountability (both under the Guidelines and under its Incentive Plan) for poor performance. Although the Guidelines provide for the exclusion of data in certain circumstances, they do not allow data to be excluded when Verizon performs the type of project requested by AT&T. *Id.* ¶ 7.

Moreover, Verizon's insistence on the exclusion of data regarding the project reflected its ability to use its monopoly power to inhibit competition in the local exchange market. As a result of Verizon's positions, negotiations between the parties were prolonged, requiring AT&T to devote substantial time and resources to the effort. *Id.* ¶ 8. In the end, because project treatment was the only feasible means of ensuring that the customer's needs would be satisfied, AT&T reluctantly agreed to the exclusion of data on the project from some of the metrics, while preserving its rights under others. *Id.*[16]

Following AT&T's concession, however, Verizon *reversed* its position and advised AT&T that it would grant AT&T's request for project treatment *without* conditions (*i.e.*, without requiring that data regarding the project be excluded from the reported monthly metrics). This reversal of position, not coincidentally, occurred the day before Verizon filed its latest application with the Commission. *Id.* ¶ 9. Verizon has not precluded the possibility that it will impose the same condition on future requests for project treatment, but has stated only that it will raise the issue in workshops before the New York Public Service Commission regarding changes to the Guidelines. *Id.*

Verizon's conduct thus offers no reason to believe that it will comply with Section 271 in the future, should its application be approved. Verizon made its unreasonable demand for exclusion of the data while its first 271 application for New Jersey was still pending – and, obviously, while Verizon still believed that the Commission would approve the application. Only after it withdrew the first application (in the face of near-certain denial by the Commission) and was on the verge of submitting a new one did Verizon finally withdraw its demand.

In short, Verizon's conduct shows its incentive and ability to delay or jeopardize projects for CLECs who need project treatment for large customers, and to circumvent the

[16]Although AT&T could have filed a complaint with the BPU against Verizon for violating the Guidelines, such a complaint would have afforded no practical relief for AT&T or its customer. A complaint would have taken months, at a minimum, to resolve – far beyond the due date requested by the customer. Regan Decl. ¶ 8.

requirements of its own Incentive Plan that it make incentive payments for rendering poor performance. Because Verizon engaged in such conduct at a time when it expected the Commission to approve its application, it clearly will exercise its monopoly power to further those objectives even more frequently in the future, should the Commission approve its application. For these reasons, approval of the application would be flatly contrary to the public interest.

CONCLUSION

For the foregoing reasons, and for the reasons stated in AT&T's pleadings and *ex parte* letters in response to Verizon's first Application, Verizon's second Application should be denied.

Respectfully submitted,

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April 8, 2001

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of April, 2002, I caused true and correct copies of the forgoing Comments of AT&T Corp. to be served on all parties by mailing, postage prepaid to their addresses listed on the attached service list.

Dated: April 8, 2002
Washington, D.C.

/s/ Peter M. Andros

Peter M. Andros

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[17] Filed electronically